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20720-95585

OFFICE OF PETITIONS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Eugenio A. Cefali
Application No. : 08/962,027 Confirmation No.:
Filed : October 31, 1997
For : INTERMEDIATE RELEASE NICOTINIC ACID
COMPOSITIONS FOR TREATING HYPERLIPIDEMIA
Group : 1615
Examiner : Robert M. Joynes

Hon. Commissioner for Patents
P.O. Box 2327
Arlington, Virginia 22202


Attn: OFFICE OF PETITIONS

The documents filed herein must be kept together as a unit and taken up in the order in which they are detailed in the Petition To Withdraw Holding of Abandonment Pursuant To 37 C.F.R. § 1.181(a) Or, In The Alternative, To Revive An Unintentionally Abandoned Application Pursuant To 37 C.F.R. § 1.137(b).

If the Office of Petitions has any questions regarding these instructions, the Office is invited to contact the undersigned at the information below.

Respectfully submitted,

Date: 1/15/03


Karen J. Messick (Reg. No. 46,256)
Attorney for Applicant
c/o KOS Pharmaceuticals, Inc.
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PETITION TO WITHDRAW HOLDING OF ABANDONMENT PURSUANT TO 37
C.F.R. § 1.181(a) OR, IN THE ALTERNATIVE, TO REVIVE
UNINTENTIONALLY ABANDONED APPLICATION
PURSUANT TO 37 C.F.R. § 1.137(b)

Sir:

Pursuant to 37 C.F.R. § 1.181(a), applicant hereby petitions to withdraw the holding of abandonment of the above-identified patent application. As detailed in the Declaration of Karen J. Messick, filed concurrently herewith, the application is considered to be abandoned, based on the fact that the United States Patent and Trademark Office has no record of receiving a response to the October 16, 2001 Decision

dismissing the September 24, 2001 Petition to Revive, for failure to include corrected formal drawings. Withdrawal of the abandoned status of the above-identified application is respectfully requested. As set forth in the Declaration of Peter J. Manso, filed concurrently herewith, on April 16, 2002, applicant timely filed a response to the October 16, 2001 Decision dismissing the September 24, 2001 Petition to Revive. As demonstrated in Exhibit A to Mr. Manso's declaration, applicant's April 16, 2002 response included the necessary formal drawings.

Should this Petition be treated as a petition under 37 C.F.R. § 1.137(b), applicant hereby petitions to revive the above-identified patent application, which was unintentionally abandoned on June 5, 2001.

The purpose of the requested withdrawal of abandoned status/revival is to: (1) submit the reply to the March 2, 2001 Notice of Allowance and Notice of Allowability, i.e., the issue fee and corrected formal drawings, which were required to allow this application to issue; (2) file a Request for Continued Examination ("RCE") of this application under 37 C.F.R. § 1.114 and (3) have considered in the RCE the accompanying Request to Correct Inventorship of this application under 37 C.F.R. § 1.48.

The unintentional abandonment of the above-identified application was caused by applicant's inadvertent failure to respond to the March 2, 2001 Notice of Allowance and Issue Fee Due and its accompanying Notice of Allowability by paying the issue fee and submitting corrected formal drawings by June 4, 2001. Had the issue fee and corrected formal drawings been timely submitted, this application would have issued as a patent.

Pursuant to 37 C.F.R. § 1.137(b), this Petition is accompanied by:

- 1) The required issue fee transmittal;
- 2) The required corrected formal drawings (FIGS. 1-5) that should have been filed prior to or concurrently with payment of the issue fee;
- 3) A Declaration of Peter J. Manso in support of this Petition; and
- 4) A Declaration of Karen J. Messick in support of this Petition.

Pursuant to 37 C.F.R. § 1.137(c), this Petition is not accompanied by a Terminal Disclaimer. The above-identified application is a utility application filed after June 8, 1995. Accordingly, no Terminal Disclaimer should be required.

This Petition is also accompanied by:

5) A Petition for Withdrawal from Issue under 37 C.F.R. § 1.313(c)(2); and

6) A Request for Continued Examination ("RCE") of this application under 37 C.F.R. § 1.114.

This Petition is also accompanied by:

7) A Request to Correct Inventorship Under 37 C.F.R. § 1.48;

8) A Statement of David J. Bova Under 37 C.F.R. § 1.48(a)(2) in Support of the Request to Correct Inventorship;

9) An executed Declaration/Power of Attorney from Eugenio A. Cefali and David J. Bova, in the above-identified patent application;

10) A Consent of Assignee Under 37 C.F.R. § 1.48(a)(5) to the Request for Correction of Inventorship with Exhibit A -- A copy of an executed Assignment from Eugenio A. Cefali, recorded in the United States Patent and Trademark Office on April 3, 1998 at Reel/Frame 9080/0471 in the above-identified patent application and;

11) A Request to Perfect Claim to Priority Pursuant to 35 U.S.C. § 120.

In the accompanying Transmittal Letter (filed in duplicate herewith), the Director is authorized to charge payment of \$750.00 for the RCE filing fee; \$130.00 for


consideration of this Petition; and any additional fee required in connection with this Petition, or any of the papers filed herewith, or to credit any overpayment of same, to Deposit Account No. 50-2543.

As indicated in the accompanying Manso and Messick declarations, the entire delay to date in filing the issue fee and corrected formal drawings in the above-identified application from the initial due date was unintentional. The undersigned attorney first became aware of the unintentional abandonment on or after October 16, 2002.

Accordingly, applicant requests that the holding of abandonment in the above-identified application be withdrawn, based on applicant's timely filing of a response to the October 15, 2001 Decision dismissing the September 24, 2001 Petition to Revive. Alternatively, applicant requests that this application be revived, to allow filing of the issue fee and corrected formal drawings, putting the application in condition for withdrawal from issue in favor of the Request for Continued

Examination, in order to reopen prosecution and allow consideration therein of the Request to Correct Inventorship filed herewith.

Respectfully submitted,



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